



General Assembly

**Substitute Bill No. 5334**

February Session, 2012

\* \_\_\_\_HB05334PH\_\_\_\_032312\_\_\_\_ \*

**AN ACT CONCERNING THE SALE OR ABANDONMENT OF WATER  
SUPPLY SOURCES AND ASSOCIATED LAND.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 25-33k of the 2012 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective October 1, 2012*):

4 (a) For purposes of this section [, "safe yield"] and section 25-33m, as  
5 amended by this act:

6 (1) "Available water" means the maximum amount of water that a  
7 public water system can dependably supply, taking into account: (A)  
8 Any limitations imposed by hydraulics, treatment, well pump  
9 capabilities, reductions of well yield due to clogging that can be  
10 corrected with redevelopment, transmission mains, permit conditions,  
11 source construction limitations, approval limitations or operational  
12 considerations; and (B) the safe yield of active sources and water  
13 supplied according to contract, provided the contract is not subject to  
14 cancellation or suspension and assures the availability of water  
15 throughout a period of drought and that the water supply is reliable;

16 (2) "Commissioner" means the Commissioner of Public Health;

17 (3) "Department" means the Department of Public Health;

18     (4) "Consumer" means any private dwelling, hotel, motel,  
19 boardinghouse, apartment, store, office building, institution,  
20 mechanical or manufacturing establishment or other place of business  
21 or industry to which water is supplied by a water company;

22     (5) "Future water supply source" means any water supply source or  
23 potential water supply source necessary to serve areas reasonably  
24 expected to require service not later than fifty years after the date of  
25 the application for a permit;

26     (6) "Potential water supply source" means a water supply source  
27 that is (A) included on the list prepared by the commissioner pursuant  
28 to section 25-33q and identified on such list as a potential water supply  
29 source; (B) identified in a water supply plan filed with, and approved  
30 by, the commissioner pursuant to section 25-32d; (C) identified in a  
31 coordinated water system plan filed with the commissioner pursuant  
32 to section 25-33h; or (D) identified in any other water supply or water  
33 system plan filed with, and approved by, the commissioner;

34     (7) "Safe yield" means the maximum dependable quantity of water  
35 per unit of time that may flow or be pumped continuously from a  
36 water supply source [of supply] during a critical dry period without  
37 consideration of available water limitations;

38     (8) "Public water system" means a system that supplies water to not  
39 less than fifteen consumers or not less than twenty-five persons for  
40 each day, not less than sixty days per year;

41     (9) "Water company" means any individual, partnership,  
42 association, corporation, municipality or other entity, or the lessee of  
43 such entity, which owns, controls or employs a system that supplies  
44 water to not less than fifteen consumers or not less than twenty-five  
45 persons for each day, not less than sixty days per year; and

46     (10) "Water supply source" means any spring, stream, watercourse,  
47 brook, river, lake, pond, well or underground waters from which  
48 water is taken.

49 (b) No [source of] water supply source that supplies water to a  
50 public water system or potential water supply source shall be  
51 abandoned, [by a water company or other entity] sold or otherwise  
52 alienated without a permit from the [Commissioner of Public Health]  
53 commissioner, except the commissioner may waive the requirement  
54 for a permit, if, upon review of an application for such permit, the  
55 commissioner determines that: (1) The ground water supply source is  
56 no longer viable due to physical damage, loss of safe yield or poor  
57 water quality; (2) the ground water supply source has been replaced  
58 with a newly-constructed ground water supply source, for which plans  
59 have been approved by the department pursuant to section 25-33; and  
60 (3) such newly-constructed ground water supply source has been  
61 constructed not more than two hundred fifty feet from the ground  
62 water supply source to be abandoned. A water company or other  
63 person or entity having control of a water supply source or potential  
64 water supply source shall apply for such permit in the form and  
65 manner prescribed by the commissioner.

66 (c) (1) Not later than [thirty] sixty days before filing an application  
67 for such permit, the applicant shall notify the commissioner of the  
68 applicant's intention to file such application. Not later than thirty days  
69 after the commissioner receives such notice, the commissioner shall  
70 notify the chief elected official of any municipality and any local health  
71 department or district [in which such source of supply is located]  
72 health department serving the municipality in which the water supply  
73 source or potential water supply source is located of the applicant's  
74 intention to file such application. Not later than sixty days after receipt  
75 of such notification from the commissioner, the municipality or  
76 municipalities and local health departments or [districts] district health  
77 departments receiving such notice [, and any water company as  
78 defined in section 25-32a,] may submit comments on such application  
79 to the commissioner. The commissioner shall take such comments into  
80 consideration when reviewing the application.

81 (2) After receipt of an application to abandon, sell or otherwise  
82 alienate a water supply source or potential water supply source, except

83 an application approved in accordance with subdivision (2) of  
84 subsection (d) of this section, the commissioner shall identify any  
85 water company that may reasonably be expected to utilize the water  
86 supply source or potential water supply source that the applicant  
87 proposes to abandon, sell or otherwise alienate. The applicant shall  
88 provide written notice of the application, by certified mail, return  
89 receipt requested, to any water company identified by the  
90 commissioner pursuant to this subdivision. The commissioner shall  
91 determine the water companies that shall receive notice after  
92 consideration of: Public water supply plans filed with, and approved  
93 by, the commissioner pursuant to section 25-32d; coordinated water  
94 system plans filed with the commissioner pursuant to section 25-33h;  
95 other water supply or water system plans filed with, and approved by,  
96 the commissioner; and the efficient and effective development of the  
97 public water supply in the state. The applicant's notice shall include:  
98 (A) Identification of the water supply source or potential water supply  
99 source that the applicant proposes to abandon, sell or otherwise  
100 alienate; (B) if the applicant intends to sell such water supply source or  
101 potential water supply source, the price at which the applicant intends  
102 to sell such source; and (C) identification of any land connected with  
103 the source that the applicant proposes to sell, lease, assign, reclassify or  
104 otherwise dispose of in accordance with section 25-32, as amended by  
105 this act.

106 (3) A water company that receives notice under subdivision (2) of  
107 this subsection and desires to acquire the water supply source or  
108 potential water supply source, shall, not later than sixty days after  
109 receipt of such notice, advise the applicant and the commissioner, in  
110 writing, by certified mail, return receipt requested, of such desire. A  
111 water company that fails to provide notice of a desire to acquire the  
112 water supply source or potential water supply source as required  
113 under this section shall be deemed to have waived any right to acquire  
114 the water supply source or potential water supply source. When two  
115 or more water companies desire to acquire the water supply source or  
116 potential water supply source and the commissioner approves the

117 application, in whole or in part, for the sale or abandonment of the  
118 water supply source or potential water supply source, the  
119 commissioner shall determine which water company shall have the  
120 right to acquire such water supply source or potential water supply  
121 source. In making the determination, the commissioner shall hold a  
122 hearing and consider any (A) public water supply plan filed with, and  
123 approved by, the commissioner pursuant to section 25-32d; (B)  
124 coordinated water system plan filed with the commissioner pursuant  
125 to section 25-33h; (C) other water supply or water system plans filed  
126 with, and approved by, the commissioner; (D) the needs of each water  
127 company; and (E) the efficient and effective development of the public  
128 water supply in the state. Not later than one year after the  
129 commissioner makes a determination in accordance with this  
130 subdivision, the water company awarded the right to acquire the water  
131 supply source or potential water supply source that is the subject of  
132 the application shall finalize such acquisition. A water company,  
133 whose rates are regulated by the Department of Energy and  
134 Environmental Protection, that acquires such water supply source or  
135 potential water supply source may include the acquisition price in its  
136 rate base.

137     ~~[(c)]~~ (d) (1) ~~[In determining whether to]~~ The commissioner shall not  
138 approve an application [,] to abandon, sell or otherwise alienate a  
139 water supply source or potential water supply source unless the  
140 commissioner [shall (A) consider the water supply needs of the water  
141 company, the state and any comments submitted pursuant to  
142 subsection (b) of this section, and (B) consult with the Commissioner of  
143 Energy and Environmental Protection, the Secretary of the Office of  
144 Policy and Management and the Public Utilities Regulatory Authority.  
145 The Commissioner of Public Health shall not be required to make a  
146 consultation pursuant to subparagraph (B) of this subdivision if the  
147 commissioner determines the source of water supply to be abandoned  
148 is a groundwater source with a safe yield of less than ten gallons per  
149 minute and is of poor water quality.] determines that such water  
150 supply source or potential water supply source would not (A) in the

151 case of abandonment, (i) be necessary in an emergency, or (ii) be  
152 needed by any public water system as a water supply source or future  
153 water supply source, and (B) in the case of abandonment, sale or  
154 alienation impair the ability of the public water system to provide a  
155 pure, adequate and reliable water supply for present and future  
156 consumers.

157 (2) The commissioner may approve, with any conditions the  
158 commissioner deems necessary, an application for a permit to abandon  
159 a ground water supply source that the commissioner determines to  
160 have a safe yield of less than ten gallons per minute and is of poor  
161 water quality without considering any additional factors.

162 [(2)] (3) [The Commissioner of Public Health shall grant a permit  
163 upon a finding that any groundwater] The commissioner shall, in  
164 determining whether to approve an application for the sale,  
165 abandonment or other alienation of any ground water supply source  
166 or potential ground water supply source with a safe yield of less than  
167 0.75 millions of gallons per day, any reservoir with a safe yield of less  
168 than 0.75 millions of gallons per day, any reservoir system with a safe  
169 yield of less than 0.75 millions of gallons per day, or any individual  
170 water supply source or potential water supply source within a  
171 reservoir system when such system has a safe yield of less than 0.75  
172 millions of gallons per day, [will not be needed by such water  
173 company for present or future water supply and, in the case of a water  
174 company required to file a water supply plan under section 25-32d,  
175 that such abandonment is consistent with a water supply plan filed  
176 and approved pursuant to said section. No permit shall be granted if  
177 the commissioner determines that the source would be necessary for  
178 water supply by the company owning such source in an emergency or  
179 the proposed abandonment would impair the ability of such company  
180 to provide a pure, adequate and reliable water supply for present and  
181 projected future customers. As used in this section, a future source of  
182 water supply shall be considered to be any source of water supply  
183 necessary to serve areas reasonably expected to require service by the  
184 water company owning such source for a period of not more than fifty

185 years after the date of the application for a permit under this section.]  
186 (A) consult with the Commissioner of Energy and Environmental  
187 Protection and the Secretary of the Office of Policy and Management;  
188 and (B) consider any (i) public water supply plan filed with, and  
189 approved by, the commissioner pursuant to section 25-32d; (ii)  
190 coordinated water system plan filed with the commissioner pursuant  
191 to section 25-33h; and (iii) other water supply or water system plan  
192 filed with, and approved by, the commissioner.

193 [(3)] (4) The Commissioner of Public Health shall, [grant a permit  
194 upon a finding that any groundwater source] in determining whether  
195 to approve an application for the sale, abandonment or other  
196 alienation of any ground water supply source or potential ground  
197 water supply source with a safe yield of more than 0.75 millions of  
198 gallons per day, any reservoir with a safe yield of more than 0.75  
199 millions of gallons per day, any reservoir system with a safe yield of  
200 more than 0.75 millions of gallons per day, or any individual water  
201 supply source or potential water supply source within a reservoir  
202 system when such system has a safe yield of more than 0.75 millions of  
203 gallons per day and is of a size or condition that makes it unsuitable  
204 [for present or future use as a drinking water supply by the water  
205 company, other entity or the state. In making a decision, the  
206 commissioner shall consider the general utility of the source and the  
207 viability for use to meet water supply needs. The commissioner shall]  
208 as a water supply source or future water supply source by the  
209 applicant's public water system or another public water system, (A)  
210 consult with the Commissioner of Energy and Environmental  
211 Protection and the Secretary of the Office of Policy and Management;  
212 (B) consider any (i) public water supply [plans filed and approved  
213 pursuant to sections 25-32d and 25-33h,] plan filed with, and approved  
214 by, the commissioner pursuant to section 25-32d; (ii) coordinated water  
215 system plan filed with the commissioner pursuant to section 25-33h;  
216 and [any] (iii) other water system plan filed with, and approved by, the  
217 commissioner; [, and] (C) consider the efficient and effective  
218 development of the public water supply in the state; and (D) consider

219 the general utility of any water supply source or potential water  
220 supply source and the viability of the use of any such water supply  
221 source or potential water supply source to meet water supply needs. In  
222 assessing the general utility of the water supply source or potential  
223 water supply source, the commissioner shall consider factors  
224 including, but not limited to, [(A) the safe yield of the source, (B)] (i)  
225 the safe yield of the water supply source or potential water supply  
226 source, (ii) the location of the water supply source or potential water  
227 supply source relative to other public water [supply] systems, [(C)] (iii)  
228 the water quality of the water supply source and the potential for  
229 treatment, [(D)] (iv) the water quality compatibility between public  
230 water systems and interconnections, [(E)] (v) the extent of water  
231 company-owned lands for source protection of the water supply  
232 source or potential water supply source, [(F)] (vi) the types of land  
233 uses and land use controls in the aquifer protection area or watershed  
234 and their potential impact on water quality of the water supply source  
235 or potential water supply source, and [(G)] (vii) any physical  
236 limitations to water service, system hydraulics and topography.

237 (e) (1) The commissioner shall not approve an application for a  
238 permit to abandon, sell or otherwise alienate a water supply source or  
239 potential water supply source unless (A) the land connected with such  
240 water supply source or potential water supply source will be sold,  
241 leased, assigned or otherwise disposed of in accordance with section  
242 25-32 and, if sold, leased, assigned or otherwise disposed of, will be  
243 acquired by the same water company that purchases the water supply  
244 source or potential water supply source, except where the applicant is  
245 granted an exemption as provided in this subsection; and (B) in the  
246 case of a sale, any protective easement or other land protection  
247 connected with the water supply source will be effective after the sale.

248 (2) When the land connected with a water supply source or  
249 potential water supply source that is the subject of an application for a  
250 permit to abandon, sell or otherwise alienate a water supply source or  
251 potential water supply source is connected to another water supply  
252 source or potential water supply source, the commissioner shall



253 determine whether the applicant shall be required to sell, lease, assign  
254 or otherwise dispose of such land or a portion of such land.

255 (3) A water company that has submitted an application to sell or  
256 otherwise alienate a water supply source or potential water supply  
257 source may apply for an exemption to the requirement in subdivision  
258 (1) of this subsection when such water company determines that some  
259 or all of the land connected with the water supply source or potential  
260 water supply source that is the subject of the application is necessary  
261 to the water company's continued operation. An application for an  
262 exemption from such requirement shall be submitted to the  
263 commissioner in the form and manner prescribed by the  
264 commissioner.

265 (4) A municipality that has submitted an application to sell or  
266 otherwise alienate a water supply source or potential water supply  
267 source may apply for an exemption to the requirement in subdivision  
268 (1) of this subsection when some or all of the land connected with the  
269 water supply source or potential water supply source is occupied by a  
270 municipal facility or used for municipal purposes, including, but not  
271 limited to, a park, beach or playing field. An application for an  
272 exemption from such requirement shall be submitted to the  
273 commissioner in the form and manner prescribed by the  
274 commissioner.

275 (f) The commissioner may establish conditions on the approval of  
276 any permit issued for the sale, abandonment or other alienation of a  
277 water supply source or potential water supply source.

278 (g) (1) A water company whose application for the sale,  
279 abandonment or other alienation of a water supply source or potential  
280 water supply source is denied, in whole or in part, may, not later than  
281 thirty days after receiving notice of such denial, request that the  
282 commissioner hold a hearing and review such decision. Such request  
283 shall be made in the form and manner prescribed by the commissioner.  
284 The commissioner shall, not later than forty-five days after conclusion

285 of the hearing, issue a final written decision. The decision shall include  
286 any findings of fact and conclusions of law necessary to the  
287 commissioner's decision.

288 (2) Any water company or other person aggrieved by a final  
289 decision of the commissioner may appeal from such decision in  
290 accordance with the provisions of section 4-183. Such decision shall be  
291 stayed during the pendency of an appeal and the appealing water  
292 company or other person shall not take any action pursuant to the  
293 application or decision during the pendency of such appeal.

294 (h) The commissioner may adopt regulations in accordance with  
295 chapter 54 to implement the provisions of this section.

296 Sec. 2. Section 25-33m of the general statutes is repealed and the  
297 following is substituted in lieu thereof (*Effective October 1, 2012*):

298 Notwithstanding the provisions of section 16-50d, any water  
299 company given written notice [pursuant to subsection (b) of section 25-  
300 33/] of an application for the sale, abandonment or other alienation of a  
301 water supply source or potential water supply source that notifies the  
302 Commissioner of Public Health of a desire to acquire such water  
303 supply source or potential water supply source in accordance with  
304 section 25-33k, as amended by this act, shall have priority to acquire [a]  
305 such source [,] or potential source [or abandoned source of water] over  
306 any municipality in which such source or potential source is located or  
307 the Commissioner of Energy and Environmental Protection.

308 Sec. 3. Subsection (d) of section 25-32 of the 2012 supplement to the  
309 general statutes is repealed and the following is substituted in lieu  
310 thereof (*Effective October 1, 2012*):

311 (d) The commissioner may grant a permit for (1) the sale of class I or  
312 II land to another water company, to a state agency or to a  
313 municipality, (2) the sale of class II land or the sale or assignment of a  
314 conservation restriction or a public access easement on class I or class  
315 II land to a private, nonprofit land-holding conservation organization,

316 or (3) the sale of class I land to a private nonprofit land-holding  
 317 conservation organization if the water company is denied a permit to  
 318 abandon a source not in current use or needed by the water company  
 319 pursuant to [subsection (c) of] section 25-33k, as amended by this act, if  
 320 the purchasing entity agrees to maintain the land subject to the  
 321 provisions of this section, any regulations adopted pursuant to this  
 322 section and the terms of any permit issued pursuant to this section.  
 323 Such purchasing entity or assignee may not sell, lease or assign any  
 324 such land or conservation restriction or public access easement or sell,  
 325 lease, assign or change the use of such land without obtaining a permit  
 326 pursuant to this section.

327 Sec. 4. Subsection (e) of section 22a-2d of the 2012 supplement to the  
 328 general statutes is repealed and the following is substituted in lieu  
 329 thereof (*Effective October 1, 2012*):

330 (e) Wherever the words "Department of Public Utility Control" are  
 331 used or referred to in the following sections of the general statutes, the  
 332 words "Public Utilities Regulatory Authority" shall be substituted in  
 333 lieu thereof: 1-84, 1-84b, 2-20a, 2-71p, 4-38c, 4a-57, 4a-74, 4d-2, 4d-80, 7-  
 334 223, 7-233t, 7-233ii, 8-387, 12-81q, 12-94d, 12-264, 12-265, 12-408b, 12-  
 335 412, 12-491, 13a-82, 13a-126a, 13b-10a, 13b-43, 13b-44, 13b-387a, 15-96,  
 336 16-1, 16-2, 16-2a, 16-6, 16-6a, 16-6b, 16-7, 16-8, 16-8b, 16-8c, 16-8d, 16-9,  
 337 16-9a, 16-10, 16-10a, 16-11, 16-12, 16-13, 16-14, 16-15, 16-16, 16-17, 16-18,  
 338 16-19, 16-19a, 16-19b, 16-19d, 16-19f, 16-19k, 16-19n, 16-19o, 16-19u, 16-  
 339 19w, 16-19x, 16-19z, 16-19aa, 16-19bb, 16-19cc, 16-19dd, 16-19ee, 16-  
 340 19ff, 16-19gg, 16-19jj, 16-19kk, 16-19mm, 16-19nn, 16-19oo, 16-19pp, 16-  
 341 19qq, 16-19tt, 16-19uu, 16-19vv, 16-20, 16-21, 16-23, 16-24, 16-25, 16-25a,  
 342 16-26, 16-27, 16-28, 16-29, 16-32, 16-32a, 16-32b, 16-32c, 16-32e, 16-32f,  
 343 16-32g, 16-33, 16-35, 16-41, 16-42, 16-43, 16-43a, 16-43d, 16-44, 16-44a,  
 344 16-45, 16-46, 16-47, 16-47a, 16-48, 16-49e, 16-50c, 16-50d, 16-50f, 16-50k,  
 345 16-50aa, 16-216, 16-227, 16-231, 16-233, 16-234, 16-235, 16-238, 16-243,  
 346 16-243a, 16-243b, 16-243c, 16-243f, 16-243i, 16-243j, 16-243k, 16-243m,  
 347 16-243n, 16-243p, 16-243q, 16-243r, 16-243s, 16-243t, 16-243u, 16-243v,  
 348 16-243w, 16-244a, 16-244b, 16-244c, 16-244d, 16-244e, 16-244f, 16-244g,  
 349 16-244h, 16-244i, 16-244k, 16-244l, 16-245, 16-245a, 16-245b, 16-245c, 16-

245e, 16-245g, 16-245l, 16-245p, 16-245q, 16-245s, 16-245t, 16-245u, 16-  
245v, 16-245w, 16-245x, 16-245aa, 16-246, 16-246e, 16-246g, 16-247c, 16-  
247j, 16-247l, 16-247m, 16-247o, 16-247p, 16-247t, 16-249, 16-250, 16-  
250a, 16-250b, 16-256b, 16-256c, 16-256h, 16-256k, 16-258a, 16-258b, 16-  
258c, 16-259, 16-261, 16-262a, 16-262c, 16-262d, 16-262i, 16-262j, 16-262k,  
16-262l, 16-262m, 16-262n, 16-262o, 16-262q, 16-262r, 16-262s, 16-262v,  
16-262w, 16-262x, 16-265, 16-269, 16-271, 16-272, 16-273, 16-274, 16-275,  
16-276, 16-278, 16-280a, 16-280b, 16-280d, 16-280e, 16-280f, 16-280h, 16-  
281a, 16-331, 16-331c, 16-331e, 16-331f, 16-331g, 16-331h, 16-331i, 16-  
331j, 16-331k, 16-331n, 16-331o, 16-331p, 16-331q, 16-331r, 16-331t, 16-  
331u, 16-331v, 16-331y, 16-331z, 16-331aa, 16-331cc, 16-331dd, 16-331ff,  
16-331gg, 16-332, 16-333, 16-333a, 16-333b, 16-333e, 16-333f, 16-333g,  
16-333h, 16-333i, 16-333l, 16-333n, 16-333o, 16-333p, 16-347, 16-348, 16-  
356, 16-357, 16-358, 16-359, 16a-3b, 16a-3c, 16a-7b, 16a-7c, 16a-13b, 16a-  
37c, subsection (b) of section 16a-38n, 16a-38o, 16a-40b, 16a-40k, 16a-41,  
16a-46, 16a-46b, 16a-46c, 16a-47a, 16a-47b, 16a-47c, 16a-47d, 16a-47e,  
16a-48, 16a-49, 16a-103, 20-298, 20-309, 20-340, 20-340a, 20-341k, 20-  
341z, 20-357, 20-541, 22a-174l, 22a-256dd, 22a-266, 22a-358, 22a-475,  
22a-478, 22a-479, 23-8b, 23-65, 25-33a, 25-33h, 25-33k, as amended by  
this act, [25-33l,] 25-33p, 25-37d, 25-37e, 26-141b, 28-1b, 28-24, 28-26, 28-  
27, 28-31, 29-282, 29-415, 32-80a, 32-222, 33-219, 33-221, 33-241, 33-951,  
42-287, 43-44, 49-4c and 52-259a.

Sec. 5. Section 25-33l of the general statutes is repealed. (*Effective*  
*October 1, 2012*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2012</i>	25-33k
Sec. 2	<i>October 1, 2012</i>	25-33m
Sec. 3	<i>October 1, 2012</i>	25-32(d)
Sec. 4	<i>October 1, 2012</i>	22a-2d(e)
Sec. 5	<i>October 1, 2012</i>	Repealer section

***Statement of Legislative Commissioners:***

In section 1(a)(5) "a water supply source" was changed to "any water supply source" and "to serve an area" was changed to "to serve areas" for clarity and in section 1(e)(1) "25-32f" was changed to "25-32" for accuracy.

***PH***        *Joint Favorable Subst.-LCO*